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IN THE HIGH COURT OF JUDICATURE AT BILASPUR: CHHATTISGARH

WRIT PETITION NO 280 /2001

PETITIONER:

Sri R.P Mishra, S/o S.N Mishra
aged 37 years,
R/o Quarter No D, Block No.8
Street No 7, Sector 3,
Bhilai, Distt. Durg. Chhattisgarh

:VERSUS:

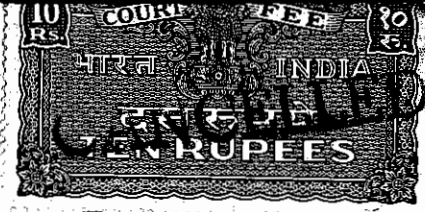
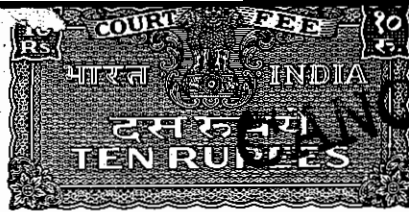
RESPONDENTS:

1. Union of India, Through:
The Secretary,
Ministry of Home Affairs,
NEW DELHI
2. Asstt. Inspector General,
(Establishment)
Directorate General,
Central Industrial Security Force
Block 13, CGO Complex, Lodhi Road,
New Delhi-3
3. Dy. Inspector General,
Central Industrial Security Force,
Unit Bhilai Steel Plant
Bhilai-Durg
4. The Commandant,
Central Industrial Security Force
Unit Bhilai Steel Plant
Bhilai-Durg

1/P. No. 320/07
Filed by Shri. med Deshmukh
Dated 20-2-07



PETITION UNDER ARTICLE 226 AND 227 OF THE CONSTITUTION OF INDIA.



NO. 2 DESH MUKH
aw.

Assessed vide Court
Order dated 01-05-2002

Respondent No 5: Bhilai Steel Plant
Thru Its Managing Director,
Ispat Bhawan,
Bhilai Steel Plant
Township - Durg.



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HIGH COURT OF CHHATTISGARH AT BILASPUR

WRIT PETITION No. 280/2001

Sri R.P. Mishra

Versus

Union of India and others

Post for ORDERS on 14 -11-2006

Sd/-
Dhirendra Mishra
Judge

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HIGH COURT OF CHHATTISGARH AT BILASPUR

WRIT PETITION No. 280/2001

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Shri P.S. Koshy, Advocate for petitioner.

Shri S.K. Beriwal, Standing Counsel with Shri Ajay Baraik, Advocate
for the respondents.

ORDER

The petitioner by this petition under Article 226/227 of the Constitution of India has challenged the order dated 5-1-2001 of Annexure P-1 issued by respondent No. 1 whereby respondent No. 2 has confirmed the order passed by the Commandant, Central Industrial Security Force (C.I.S.F.), unit Bhilai Steel Plant, Bhilai dated 7-6-2000 of Annexure P-2.

2. Case of the petitioner is that the petitioner was working as Constable with Central Industrial Security Force, Unit Bhilai Steel Plant, Bhilai with effect from 15-7-1983. He was issued an order of Annexure P-3 to proceed on temporary duty to C.I.S.F. unit K.S.T.P.P., Korba to attend a departmental enquiry on 15-9-1997. The train by which he was proceeding to Korba met with an accident on route and in the above accident, the petitioner sustained multiple injuries on his head and cervical spine injury with fracture on his vertebra D6 and D7, and C4 and C5. He was admitted firstly into KSTPP, Korba Hospital and thereafter shifted to the Bhilai Steel Plant Hospital for further treatment. The petitioner remained in hospital till 30th January, 1998. He was declared fit with effect from 31st January, 1998 for performing light nature of duties other than field work and accordingly he

DR
15-1-2001

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joined his duties with effect from 31st January, 1998 and the respondents allotted him light nature of duties i.e. office work and table work.

3. A show cause notice of Annexure P-4 dated 6/8-5-2000 was issued to the petitioner calling upon him to show cause as to why he should not be retired from service on account of his physical infirmity as per medical report of Annexure P-5, to which the petitioner replied vide Annexures P-6 and P-7. Referring to the report of Annexure P-8 dated 4-4-2000 by the Medical Board, the petitioner submitted that he was in a position to perform duties in a sitting position and was only unfit for field duties. The petitioner was again sent for medical examination by medical board which gave the report vide Annexures P-10 and P-11 respectively. These reports specifically mention that the petitioner can do any job in a sitting position like telephone attendant and table work etc. and that his condition is fast improving. The respondents vide order of Annexure P-2, retired the petitioner from service with immediate effect owing to his physical infirmity and his petition for cancellation of final order of Annexure P-2 was rejected by order of Annexure P-1.

4. Learned counsel for the petitioner submits that after discharge from the hospital, the petitioner joined his duty on 31st January, 1998 as he was declared medically fit to perform light duties other than the field work. He continued to discharge his duties for a period of almost 2½ years when he was served with a show cause notice of Annexure P-4 on 6/8th May, 2000. The reports of Medical Board contained in Annexures P-10 and P-11 clearly mention that the petitioner is fit for further service of a less laborious

character than that which he had been doing and he is capable of performing table work, office job, telephone attendant, etc. and he is improving gradually. It is further contended that the review petition of the petitioner was rejected vide order of Annexure P-1 with an observation that C.I.S.F. is an armed force of the Union and its all members should be fit in all respect to perform their duties. There are no separate posts sanctioned in C.I.S.F. which carries less laborious job, therefore, it may not be possible to employ a medically unfit person on any lower post in CISF. However, the above order is discriminatory and contrary to the admitted facts as in many cases, the respondents have retained the employees in service by giving them light duties in the office. The petitioner places reliance in the judgments in the matters of Narendra Kumar Chandia -v- State of Haryana and others reported in AIR 1995 SC 519, and Kunal Singh -v- Union of India and another reported in (2003) 4 SCC 524.

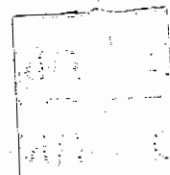
5. On the other hand, learned counsel for the respondents not disputing the averments of the petition, so far as it relates to employment, accident during the course of employment and the certificates of medical board filed by the petitioner, submits that from the Certificates of Annexures P-10 and P-11, it is evident that the petitioner was found to be completely and permanently incapacitated for further service of any kind in the department to which he belongs, in consequence of old fracture on Vertebra with fracture on D-6 and D-7. The extent of disability of the petitioner was found to be about 75% vide report of Annexure R-2. As per Circular Annexure R-3, there is a direction by the respondent-organization that the employees who are found permanently incapacitated for active service or other wise after

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medical examination, the competent authority may retire such government servant from service, if he is a permanent government servant and grant him invalid pension/Gratuity etc. under Rule 38 of Central Civil Services (Pension) Rules, 1972 and this is also applicable to such disabled persons who attain disablement which is attributable to the government service. Replying to the specific instances given in the petition in para 6-D, it is contended that Constable G.N. Sahu and V. Devi Das, in the respondent-organization posted at CISF, Unit Bhilai Steel Plant, Bhilai were found medically fit to resume duty and they were recommended to be given light job and in these circumstances, they have been retained in the employment.

6. I have heard the learned counsel for the parties.

7. In the instant matter, facts are not in dispute. It is not in dispute that the petitioner met with a railway accident and sustained injuries described in the report of medical board. It is also not in dispute that the petitioner after his discharge from hospital was allowed to join services on 31-1-1998 and discharged his duties under the respondents till he was retired from service vide order of Annexure P-2 on 7th June, 2000. Rule 38 (4) of the Central Civil Services (Pension) rules, 1972 provides that where the medical authority referred to in sub-rule 2 has declared a Government servant fit for further service of less laborious character, than that which he has been doing, he should, provided he is willing to be so employed, be employed on lower post and if there be no means of employing him even on a lower post, he may be admitted to invalid pension. The petitioner has been retired by order of Annexure P-1 and P-2 with an observation that there are



no separate posts sanctioned in the CISF which carries less laborious job. Therefore, it may not be possible to employ a medically unfit person on any lower post in CISF. The above cited reason cannot be justified in view of the specifically cited cases of individuals in para 6-D of the petition where similarly situated disabled employees were not retired and were retained in employment by allowing them light duty. This factual aspect has been admitted by the respondents in their additional return and as such the petitioner has made out a case of discrimination. That apart, the Supreme Court in the matter of Kunal Singh (supra), while dealing with an appeal of a constable in the Special Service Bureau who was invalidated from service on the report of medical board, under which he was declared permanently incapacitated for further service under Rule 38 of the Central Civil Services (Pension) Rules 1972 and granted invalidity pension, allowed the appeal, considering the provisions of the Persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation Act, 1995 (For short, hereinafter referred as the 'Act'). Section 47 of the Act is reproduced below:-

"47. Non-discrimination in Government employment.-(1) No establishment shall dispense with, or reduce in rank, an employee who acquires a disability during his service:

Provided that, if an employee, after acquiring disability is not suitable for the post he was holding, could be shifted to some other post with the same pay scale and service benefits:

Provided further that if it is not possible to adjust the employee against any post, he may be kept on a supernumerary post until a suitable post is available or, he attains the age of superannuation, whichever is earlier.

(2) No promotion shall be denied to a person merely on the ground of his disability:



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Provided that the appropriate Government may, having regard to the type of work carried on in any establishment, by notification and subject to such conditions, if any, as may be specified in such notification, exempt any establishment from the provisions of this section."

In Kunal Singh's case (supra), the Supreme Court while allowing the appeal has held thus :-

"9. Chapter VI of the Act deals with employment relating to persons with disabilities, who are yet to secure employment. Section 47, which falls in Chapter VIII, deals with an employee, who is already in service and acquires a disability during his service. It must be borne in mind that Section 2 of the Act has given distinct and different definitions of "disability" and "person with disability". It is well settled that in the same enactment if two distinct definitions are given defining a word/expression, they must be understood accordingly in terms of the definition. It must be remembered that a person does not acquire or suffer disability by choice. An employee, who acquires disability during his service, is sought to be protected under Section 47 of the Act specifically. Such employee, acquiring disability, if not protected, would not only suffer himself, but possibly all those who depend on him would also suffer. The very frame and contents of Section 47 clearly indicate its mandatory nature. The very opening part of section reads "no establishment shall dispense with, or reduce in rank, an employee who acquires a disability during his service". The section further provides that if an employee after acquiring disability is not suitable for the post he was holding, could be shifted to some other post with the same pay scale and service benefits; if it is not possible to adjust the employee against any post he will be kept on a supernumerary post until a suitable post is available or he attains the age of superannuation, whichever is earlier. Added to this no promotion shall be denied to a person merely on the ground of his disability as is evident from sub-section (2) of Section 47. Section 47 contains a clear directive that the employer shall not dispense with or reduce in rank an employee who acquires a disability during the service. In construing a provision of a social beneficial enactment that too dealing with disabled persons intended to give them equal opportunities, protection of rights and full participation, the view that advances the object of the Act and serves its purpose must be preferred to the one which obstructs the object and paralyses the purpose of the Act. Language of Section 47 is plain and certain casting statutory obligation on the employer to protect an employee acquiring disability during service."

8. So far as the arguments of learned counsel for the respondents that the petitioner is getting pension as per Rule 38 of C.C.S. (Pension) Rules,

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1972 is concerned, the Act is a special legislation dealing with persons with disabilities to provide equal opportunities, protection of rights and full participation to them, it being special enactment of Rule 38 of the above Rules, cannot over ride Section 47 of the above Act. Even other wise Section 72 of the Act which is reproduced hereunder makes it clear that the provisions of the Act are attracted in the instant case.

"72. Act to be in addition to and not in derogation of any other law.- The provisions of this Act, or the rules made thereunder shall be in addition to, and not in derogation of any other law for the time being in force or any rules, order or any instructions issued thereunder, enacted or issued for the benefit of persons with disabilities."

9. Therefore, the petitioner cannot be denied protection available to him under Section 47 of the Act merely because he is getting invalidity pension under Rule 38. Considering that the petitioner acquired disability during his service and further considering that after discharge from the hospital, he joined his services on 31st January, 1998 and discharged his duties assigned to him for a period of approximately 2 $\frac{1}{2}$ years, if the respondents found him not suitable for the post he was holding, he could be shifted to some other posts with same pay scale and service benefits; if it was not possible to adjust him against any post, he could be kept on a supernumerary post until a suitable post was available or he attains the age of superannuation whichever is earlier. No such efforts were made by the respondent. They have proceeded to hold that he is permanently incapacitated to continue in service without considering the effect of other provisions of Section 47 of the Act.



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10. On the basis of aforesaid discussion, the petition deserves to be allowed and accordingly the same is allowed. The respondents are directed to give relief in terms of Section 47 of the Act.

11. There shall be no order as to costs.

Sd/-
Dhirendra Mishra
Judge